THE SPANISH CIVIL CODE

POLITICAL, criminal, and adjective laws are important, but the test of a civilization is the Civil Law, that controlling the relations of man and man. It covers his status, whether a man be considered as an individual or as a member of the family, his property, whether in land or in movable things, and the many relations which he sustains to his fellow man by consent in the shape of contract or by wrongful act. It is, so to speak, the core of law, all else being but a protecting shell.

To a lover of Spain the nineteenth century is an absorbing study. The deposition of Charles IV by Napoleon was no great loss, but neither the well-meaning Joseph backed by French influences on the one side, nor the Junta Central and Constitution of 1812 backed by the English on the other side, could prevail. The fall of Napoleon saw the return of Ferdinand VII and reaction. Ferdinand's abrogation of the Salic law in favor of his daughter Isabella II brought on the Carlist civil war upon his death, and even when that was subdued the immoralities of the queen and the political controversies under Espartero, O'Donnell, Narvaez, and others deprived the country of influence, if not of the respect of Europe.

Public affairs were indeed distressing, and yet there was a tendency which promised the regeneration of Spain. Ever since the Constitution of 1812, which for the first time called for a uniform code instead of the multifarious *Recopilacion* and the many local *fueros*, there had been aspirations for codifying the civil side of the Spanish Law. In 1851 the leaders of the *Cortes* prescribed thirty-six fundamentals for such a code, proposed by the same Code Commission which had drawn the successful Criminal Code of 1848. In part they were based on the *Code Napoléon*, and much of their value was due to De la Serna.[1] Although the plan was not carried out, earnest men continued seeking public improvement. Unfortunately the Latin desire for uniformity sought legislation from above rather than civic development from below; but the simplifying of the civil

[1] 1 JURISCONSULTOS ESPAÑOLES, 177, 231; 2 *Ib.*, 144.

laws was a movement which enlisted the support of great men who might differ in political aims. Among them ranks highest Manuel Alonzo Martinez, coming from the old Castilian capital, Burgos, but through his work belonging to all Spain. He was the author of the Law of Waters of 1866, based on the Moorish customs, and, trusted by all parties, was under later administrations the head of the movement. He was president of the General Commission on Codification, and when Minister of Grace and Justice, from the death of Alfonso XII in 1885 until the end of 1888, carried through the work on a civil code. He had had much experience, but his great work was this code.[2]

The two principal difficulties related to marriage and the local *fueros*. The first he overcame by negotiations with Pope Leo XIII, and the second by conciliation, particularly through his book *El Codigo Civil en sus Relaciones con las Legislaciones Forales*, 1884–85. He carried through the Cortes the law of May 11, 1888, for twenty-seven bases, aiming at retaining the old historic principles of the Spanish Law, simplified and harmonized, but taking modern scientific principles into account for the new provisions deemed necessary.[3] There had been propositions by him and Silvela earlier, but the new code followed the bases prescribed in 1888, whether as to authorizing civil marriages, or as to family and property rights, in which modifications entered from the old Foral legislation. The subject of obligations, including contracts, remained largely Roman as before, regard being had, however, to modifications in favor of third persons arising from the Mortgage Law. While the new Civil Code was only supplemental, *supletorio*, in Aragon and other districts having their own *fueros*, it abolished or rather fulfilled the laws and customs of Castile, which substantially made up the code itself. The work as reported was slightly amended by the Codification Commission and became effective July 29, 1889, under Canalejas; but no one questioned that the work as a whole was that of Alonzo Martinez.

In the criticism of the new code much attention was paid to the formal matter of its division into four books instead of three like

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[2] Martinez attributed much of the credit for the adoption of the Code by the Cortes to German Gamazo. 1 JURISCONSULTOS ESPAÑOLES, 231.

[3] Base I of the Law of May 11, 1888, in 1 MANRESA COMENTARIOS, 3; 2 JURISCONSULTOS ESPAÑOLES, 224, 269.

the *Code Napoléon*. Of the *Code Napoléon* the first book relates to persons, the second to property and the third to acquisition of property. It seemed to the Spanish codifiers better to have four books, thus dividing the law into Book I on Persons, Book II on Property, Ownership, and its Modifications, Book III on the different ways of acquiring ownership, and Book IV on Obligations and Contracts.[4]

The scientific basis of these distinctions, which go back to the Roman Gaius, is that Law like Nature is made up only of Persons and Things, otherwise called Property. Civil Law therefore is concerned with these in their five combinations. (1) Persons as such, in their relations to each other; a right is the bond, *vinculum juris*, connecting them. (2) When a Person's right directly affects Property it is real, over the Thing, whether movable or immovable, personalty or land, — for the use of "realty" for land is a Common Law term. (3) When the right can be exercised only through another, it relates to Obligations, whether contractual or arising from wrongs or delicts, including negligence. It is here personal, against another person. (4) But persons have rights growing out of the natural relation called the Family, and also (5) out of the artificial relation of Succession, whereby a dead Person now as in Ancient Law is considered as still surviving in the Property he leaves behind him.

Practically these five subjects touch on many facts, but they can at least be treated separately as subjects of study. This the Spanish Code does, but by combining Persons and Family in the first book and Property and Succession in the third.

PERSONS

The old law of Persons was not much changed in the Spanish Code, and indeed, as Bluntschli truly says, law will have little

[4] The Civil Code is published in English as part of WALTON'S CIVIL LAW OF SPAIN AND SPANISH AMERICA (1900); also in 1909 by the House of Representatives of the United States as PUBLIC DOCUMENT No. 1484 of the Sixtieth Congress, second session; and as part of the Compilation of the Revised Statutes and Codes of Porto Rico in 1913 as SENATE DOCUMENT No. 813 of the Sixty-first Congress, third session. The language is not clear in many instances. The *Codigo Civil* was promulgated in Cuba and Porto Rico July 31, 1889, and is still in force in Cuba and in Porto Rico. A convenient late edition with annotations is that of Betancourt, 1916, unlike the Porto Rican revision of 1902, retaining the Spanish numbering.

authority unless it has its roots in the past of its people. New provisions were those allowing civil as well as canonical marriages,[5] divorce, which, however, only suspended life together,[6] and as to the time at which rights should be vested in children.[7] Damages were allowed for breach of promise of marriage, but not its specific performance.[8] The law was made more definite as to what indigent relatives must be supported,[9] and greater attention was paid in the new code than formerly to the subject of natural children, who were now subjected to *patria potestas*, whose extent is defined. Married women were better cared for, although the husband was left administrator of the wife's property. The attention paid to family matters is indicated among other things by the provision that the father must give his daughter at marriage half of what she would inherit from him, which goes back in principle to the Partidas.[10] Now for the first time appears the right of a couple contracting marriage to make property settlements in advance, a provision up to this time peculiar to Aragon, which also gave all the goods left by a deceased spouse to the survivor; and this was but carrying out the principle running all through the Spanish law of keeping the estate of a decedent together as a unit. The code did away with the old curators for minors and instituted protutors, but the most striking change was the establishment of the family council. Precedents had been found for it in the *Fuero Juzgo*[11] and in the *Fuero Real*,[12] but this was as shadowy as the declaration of the Roman Digest [13] directing the praetor to consult with the next of kin of an orphan as to his education and support. Indeed the provision was more European than Spanish, as it is found in France.[14] Nor was it exclusive, for there is also a provision for the interposition of a court on the application of any one in interest.[15]

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[5] Civ. Code, Arts. 75, 83; Porto Rico Civ. Code, § 131.

[6] Civ. Code, Art. 104.

[7] *Ib.*, Art. 29 (P. R. § 24).

[8] *Ib.*, Arts. 43 and 44.

[9] *Ib.*, Arts. 143 and 153 (P. R. §§ 213).

[10] Part IV, Tit. XI, Leyes 8 and 9.

[11] Bk. IV, Tit. III, Ley 3.

[12] Bk. III, Tit. VII, Ley 3.

[13] Lib. XIII, Tit. IV, Lex. 5, § 1.

[14] Coûtume de Paris, Art. 1.

[15] Civ. Code, Art. 219 (P. R. § 255). The Family Council is omitted from the Porto Rican Code.

The twelve titles of Book I after the introductory one cover the subjects of Spaniards and Foreigners, Birth and Extinction of Civil Personality, Domicile, Marriage, Paternity and Filiation, Support of Relations, Parental Authority, Absence, Guardianship, Family Council, Emancipation and Majority, and Registry of Civil Status, which includes marriage, birth and death. This shows how much of Spanish law is taken up with the subject of status, which Mr. Bryce has declared to be the distinguishing feature of the Civil Law in general.

PROPERTY

Book II, on Property and its modifications, has fewer changes, although it is said that Civil Law now centers about Property and not Family as in former times.[16] It contains only eight titles, which relate respectively to Classification of Property, Ownership, Community of Property, Special Properties, Possession, Usufruct, Easements, and the Registry of Property. The basic distinction of movables and immovables remains, and among the changes most to be noticed is the emphasis now laid upon possession as a source of title.[17] The old Spanish law acted upon the maxim *res suo domino clamat*, but this had gradually to give way to other rules in the growth of trade and commerce. The subject of registry, however, is merely introductory; its full development is found in the separate Law of Mortgages. In this connection should be mentioned the institution of *Montes de Piedad*, or state pawnshops, in which one could purchase safely.

Spanish social history even from Roman times had tended to the separation of possession from ownership. The same tendency in England had given rise to the Statute of Uses and to the doctrine of Trusts which gave the Chancellor so much of his jurisdiction. In Spain the title of Usufruct, Use, and Occupancy is a long one, carefully defining the rights and duties of all concerned, enforceable in the same courts as other property rights.

The minute divisions of Spanish law sometimes induce duplication. Thus this division of the Civil Code provides for the law of waters,[18] superficial and subterranean, while the same subject had

[16] SOHM, INSTITUTES OF ROMAN LAW, 163.
[17] CIV. CODE, Art. 464 (P. R. § 466).
[18] *Ib.*, Art. 407–25 (P. R. §§ 414–32).

been quite fully covered by the 1866 Law of Waters for irrigation. So intellectual property [19] was covered also by the copyright law. The most striking instances of this redundance are outside the Civil Code proper in the elaborate regulations really enlarging the Mortgage and Commercial Codes and going far beyond the American idea of explanatory and administrative provisions.

Succession

Book III shows greater changes from the past Spanish law, although it has but the three titles of Retention, Gifts, and Successions, testate and intestate. Thus there is introduced the holographic will, made secretly by the testator, alongside the old testament before a notary, and in this a novelty to Spain, where so much was done by writing before a notary; but there had been already known a nuncupative will proved by the memory of witnesses. Freedom of will was no doubt borrowed from Aragon, Cataluña and Navarre, where there was greater liberty in testaments, although a certain portion of the estate, a *legitima*, could not be willed. In the new code a father could dispose freely of a third of his property, the remainder going to his children in shares which up to a certain point could be varied between them by *mejoras*.[20] The support of the widow was better provided for than previously, for the Partidas only allowed her in case she had no property to take a quarter of what the husband left, and under the new code she takes the share of a child, or a half if there are no descendants or ascendants. Natural children were given greater rights of inheritance; the old Law of Toro (A. D. 1504) [21] had allowed them to be omitted altogether unless there were no other children. The unity of the Succession is maintained, but the heir is not liable for debts unless he has accepted the estate without asking for an inventory.

Obligations

Book IV covers Obligations and Contracts. It is Roman in spirit, but its author, German Gamazo, introduces in Article 1088

[19] *Ib.*, Art. 428.

[20] The third was placed in the Code by the efforts of Castilian representatives over the efforts of Catalonians like Duran y Bass. 2 Jurisconsultos Españoles, 248.

[21] Law 10.

for the first time in any body of law the scientific classification of obligations as consisting in "giving, doing or refraining from doing a certain thing." [22] The titles are Obligations, Contracts, Contracts relating to Property by reason of Marriage, Purchase and Sale, Exchange, Lease, Annuities, Partnership, Agency, Loans, Depositum, Gambling Contracts, Compromises and Arbitrations, Security, Pledge, Mortgage and Antichresis, Obligations without agreement, Concurrence and Preference of Credits, and Prescription.

The elements of a contract are declared to be: 1. The consent of the contracting parties. 2. A definite object which may be the subject of the contract. 3. The cause for the obligation which may be established.[23] Although the Roman law is closely followed, even as to names of different kinds of contract, the famous provision of title 16 of the Ordenamiento of Alcala (A. D. 1348) is preserved in Article 1278, as follows:

> Contracts shall be binding, whatever may be the form in which they may have been executed, provided the essential conditions required for their validity exist.

This has been declared to be the triumph of the spiritual, Germanic principle of substance over the formality which had become the guiding rule of the Civil Law from the time of Justinian,[24] and which has been the secret of the art of the Latin nations and of the classicism of the Latin mind. The great tendency to form in Spain has been marked even by visitors from other Latin countries.[25] The preference of substance to form is the essence of the English Chancery Court, derived in part from the Canon Law rule *pacta sunt servanda*, but in Spain this is applied through the ordinary courts, as legislation there prevented the rise of separate jurisdictions. The code suppresses the old Roman literal contract as being unsuited to modern conditions and allows greater freedom in re-

[22] 1 JURISCONSULTOS ESPAÑOLES, 231. CIVIL CODE, Art. 1088 (P. R. § 1055).

[23] *Causa* is analogous to the Common Law consideration, but was not reached by evolution of court procedure as consideration was through the widening of assumpsit. [Mouton *v.* Noble, 1 La. Ann. 192 (1846); HOLMES, COMMON LAW, 253, 256.] It is interesting to see how in such ways the common needs of man bring about substantially the same results even in law; and similarly absolution from fulfilling a contract at Common Law by Act of God is in its results much the same as the *Vis Major* of the Civil Law.

[24] 8 MANRESA COMENTARIO, 690.

[25] DE AMICIS, SPAIN AND SPANIARDS, 210; as to Castelar's oratory, 212.

gard to proof of consideration, based upon the provision of *non numerata pecunia*, mistake as to money paid.

The right of rescission, that of canceling a contract if the property is worth only half of the price, is subject to criticism on economic principles, but it still survives except so far as it affects third persons under the Mortgage Law.[26] It rests on the same policy of protecting one from his own improvidence which obtains in the American exemption laws and redemption from judgment sales, neither of which obtain in the Spanish law. The code, however, still allows a co-owner to redeem the share sold by another.

Unless there is a contract before marriage, property is considered as held under the law of conjugal partnership or *gananciales*, which may be modified by judicial decree.[27] Article 1401 of the Civil Code is as follows:

> To the conjugal partnership belong: 1. Property acquired for a valuable consideration during the marriage at the expense of the partnership property, whether the acquisition is made for the partnership or for one of the spouses only. 2. That obtained by the industry, salaries, or work of the spouses or of either of them. 3. The fruits, income, or interest collected or accrued during the marriage, coming from the partnership property, or from that which belongs to either one of the spouses.

Purchase and sale is elaborately provided for, including obligations of both sides, and warranty defined as covering possession and defects.[28]

There could be rescission for loss (*lesion*) of a quarter of the price of property of minors when the tutors sold without the consent of the family council, or court in some cases,[29] and the same principle was applied to agents of persons absent. There were also some changes as to leases, for, contrary to the old rule, the lessee can now sublease without permission of the lessor unless there is an express prohibition in the contract. Curiously enough, however, the rate of interest was not prescribed, and it had to be supplied by judicial construction as six per cent.

The same causes which had separated possession from owner-

[26] CIV. CODE, Art. 1293 (P. R. § 1260).
[27] *Ib.*, Art. 1407 (P. R. § 1322).
[28] *Ib.*, Arts. 1445, 1461, 1474 (P. R. §§ 1348, 1364, 1377).
[29] Longpré *v.* Diaz, 237 U. S. 512 (1915).

ship make annuities, *censos*, important, and with this the subject of *emphyteusis* by which an annual rent in kind is charged upon land. The *censo* is still common. It originated with Roman taxation, but, as Montesquieu shows, became in the Middle Ages the very different thing of a charge or easement by contract between individuals, and particularly in favor of the Church.[30]

Life estates received attention. Philip II prohibited these for more than one life, but this was later extended to two, and the Civil Code removes the limit, leaving it to contract. Partnership is covered, but the form so well known as *sociedad en commendita*, a limited partnership derived from Italy, by which one puts a special amount into the business without further liability, is left to the Code of Commerce. Agency also looms larger, for much business is done by agents, and bailment, *depositum*, pledge, and mortgage, are important from the same tendency to do business through another.[31] Mortgage is discussed but is also the subject of the fuller Mortgage Law, but there remains the anomaly that while land and personalty are both things, *res*, and are considered alike, there can be a mortgage of land but not a chattel mortgage by contract, and the reason is that by Preferences the law has already established all the liens it thinks are proper. The old Roman *antichresis* survives, by which a creditor becomes as it were a mortgagee in possession, applying the produce to interest and principal.[32] Gaming has been a favorite amusement, if not a vice, of the Spaniards perhaps from Gothic times; De Soto's soldiers in the wilds of America gambled away their pearls and even clothing. Charles III found it necessary to declare what was lost at game recoverable by suit, and the new code maintains the same policy, although in different words.

The Civil Law idea of obligation is something that legally binds one person to another, whether by contract, express or implied, or what the Common Law calls tort. The subject of contract is, therefore, largely developed, as in the Roman Law, from which it is mainly taken. Tort is confined principally to sections 1902 and 1903, declaring a person liable for the results of his act, and limit-

[30] Civ. Code, Arts. 1604, 1628 (P. R. §§ 1507, 1531); Code Justinian, IV, 47, Lex 2; Esprit des Lois, Livre XXX, chaps. 14–15.

[31] Civ. Code, Arts. 1665, 1709, 1758 (P. R. §§ 1556, 1611, 1660).

[32] *Ib.*, Art. 1881 (P. R. § 1782).

ing his liability for the acts of others to a few specified classes,[33] as follows: —

Art. 1902. A person who by act or omission causes damage to another when there is fault or negligence shall be obliged to repair the damage so done.

Art. 1903. The obligation imposed by the preceding article is demandable, not only for personal acts and omissions, but also for those of the persons for whom they should be responsible.

The father, and on his death or incapacity the mother, is liable for the damages caused by the minors who live with them.

Guardians are liable for the damages caused by minors or incapacitated persons who are under their authority and live with them.

Owners or directors of an establishment or enterprise are equally liable for the damages caused by their employees in the service of the branches in which the latter may be employed or on account of their duties.

The State is liable in this sense when it acts through a special agent, but not when the damage should have been caused by the official to whom properly it pertained to do the act performed, in which case the provisions of the preceding article shall be applicable.

Finally, masters or directors of arts and trades are liable for the damages caused by their pupils or apprentices while they are under their custody.

The liability referred to in this article shall cease when the persons mentioned therein prove that they employed all the diligence of a good father of a family to avoid the damage.

The term "good father of a family" bears the imprint of a jurisprudence which highly regards status.[34] An Employers' Liability Law was enacted in 1901 supplementing the general provisions of the Code as to negligence.

Prescription and Procedure

The Common Law thinks of the Statute of Limitations as a bar to suits, and only as barring the remedy is it a means of vesting rights. The Civil Law is more logical and classes Prescription, — that is time, good faith and paper title, — amongst the modes of acquiring title, although rather illogically both the *Code Napoléon* and the Spanish Code put Prescription in Book Four on Obliga-

[33] Scovile *v.* Soler (P. R. Fed. Court, MS.).

[34] Ortiz *v.* Bull Insular Line (P. R. Fed. Court, MS.).

tions and Contracts. The ordinary prescription of property rights, what is called acquisitive prescription, requires possession in good faith, that is the belief that the grantor owned the property, and under a title apparently valid. Good faith is presumed, but proper title must be proved.[35] Having taken up Acquisitive Prescription, that of rights and property, the code goes on to provide in a separate chapter for Prescription of Actions, barring remedies for the recovery of property and rights, although strictly this would seem to be a matter for a Code of Procedure. The period for a suit as to ownership of personal property, the so-called real action, is three years, but six years if without good faith.[36] As to suit for ownership of lands, also a real action because for the thing, the time is ten years for residents and twenty for non-residents, with a special prescription of thirty years for cases of absent persons holding without title or good faith.[37] Actions prescribe by mere lapse of time, being generally six years as to personalty and thirty as to lands.[38] There are special shorter terms for special cases, such as mortgages, co-owners, rents, fees, wages and innkeepers, one year being the term for possessory actions and torts. Prescription is interrupted not only by suit and acknowledgment, but by demand or extrajudicial claim of the creditor, which opens a wide field for evidence. The prescription for acquiring ownership of property is therefore far different from that of a remedy to enforce rights to property, two things confounded at Common Law.

Procedure in general is covered by the Code of Civil Procedure, earlier in date and still in force, but rights and their enforcement have always been closely identified. The Civil Code declares that a person may have an action on the one side for property or title as such, being what is known as a real action, *reivindicacion*, as under the Roman law, and on the other may sue for its use or possession, this being in the nature of a personal action.[39] So a *redhibitory* action to cancel contracts as to defective animals is also provided

[35] Civ. Code, Arts. 1940, 1950, 1952, 1954 (P. R. §§ 1841, 1851, 1853, 1855). These provisions as to good faith and title are similar to the *Code Napoléon*, Art. 2265.

[36] Art. 1955 (P. R. § 1856).

[37] Arts. 1957, 1959 (P. R. § 1858).

[38] Arts. 1961–63 (P. R. §§ 1862–64).

[39] Civ. Code, Art. 348 (P. R. § 354). As Porto Rico has an American Code of Civil Procedure, that of California, it is an interesting question how far *reivindicacion* and the American remedies coincide. As to land it is practically identical with ejectment.

for.[40] The order of preference of debts becomes important as to this distinction between real and personal actions, as the distinction is in connection with the record or Mortgage Law, which is expressly recognized by the Civil Code as in force.[41] The principles of evidence and proof in general are defined in connection with written contracts, presumptions not being favored and documents being regarded as superior to other evidence.

Other striking instances of remedial matters embraced in the substantive law are the titles of Rescission and Nullity, which are much like those in English Equity and based upon the same principles, although differing in detail.[42] Rescission applies where there is inadequate consideration, *lesion*, and particularly to contracts in fraud of creditors, and necessitates return of the articles with their produce or interest. Nullity applies particularly where the contract is void for lack of the forms of law or lack of capacity of a party, whether or not a crime is involved, and covers both void and voidable contracts. The prescription for Rescission or Nullity suits is four years.

Preferences (Liens)

The subjection of property, particularly land, to debts was a long evolution in England on account of feudal obstacles. Spain had no such trouble, and a debtor's property, present and future, is subject to fulfilment of his obligations.[43] In compensation, liens grew up in Common Law countries, such as those in favor of mechanics making repairs and improvements to articles movable in nature, and these have been extended to realty. The state has also prescribed the order or priority in which the proceeds of the property shall be distributed after the death or bankruptcy of the owner, these being necessary exceptions to the common law freedom of contract. It is characteristic of the wider general control of the government on the Continent that the Civil Law goes further and prescribes the order in which a man shall pay his debts while

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[40] Civ. Code, Art. 1496 (P. R. § 1399).

[41] Civ. Code, Art. 462 (P. R. § 464).

[42] Rescission, Civ. Code, Art. 1290 (P. R. § 1257); Nullity, Civ. Code, Art. 1300 (P. R. § 1267). When either matter comes up in the Federal Court in Porto Rico the procedure is by bill on the Equity side of the docket.

[43] Civ. Code, Art. 1911 (P. R. § 1812).

in the discharge of business;[44] and this is quite apart from merchants: whose matters are controlled by the separate Commercial Code. Such order of payment is called a Preference and is akin to a lien,[45] although it may affect one's whole estate and not as at Common Law and Admiralty be confined to specific articles, and is not enforced by separate proceedings or in special courts.

Preferences on specific personalty in the Code are graded as follows: first, for construction, repair, and purchase price, then successively pledge, warehouse and the like, transportation, hotel lien, agricultural lien for advances, landlord's claim for current year;[46] and the lien follows the goods. As to realty, the priority of preference is taxes, two years' insurance, registered agricultural credits (*refacciones*), registered attachments, and unregistered agricultural credits. There are also preferences on property in general, such as local taxes, judicial expenses, funeral and family expenses, last illness, wages for one year, family supplies, and bankrupt's support. Preferences lowest in the scale are for debts evidenced by an instrument before a notary and then for a judgment after litigation.

In case of conflict among claims of the same class, date controls, except that as to unregistered agricultural advances the last comes first, and advances are preferred to rents.

At the same time with Preferences the Code takes up the subject of Insolvency. Bankruptcy is a separate subject, peculiar to commercial law and will be found in the Code of Commerce, but any one may become unable to pay his debts at least for a time, and the Civil Code therefore prescribes for suspension of payment and compromise;[47] the matter of Preferences comes into special play in this connection. Under the American system as applied in Porto Rico the Spanish law of Preferences is also applied in Receiverships and Bankruptcy.[48]

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[44] CIV. CODE, Arts. 1911, 1920 (P. R. §§ 1812, 1822).

[45] *Re* Pilar Hermanos, 8 P. R. Fed. 605, 610 (1916); Yankee Blade, 19 How. (U. S.) 82, 89 (1856).

[46] CIV. CODE, Arts. 1922–24 (P. R. §§ 1823–25).

[47] CIV. CODE, Art. 1917 (P. R. § 1818).

[48] Welch *v.* San Cristobal, 7 P. R. Fed. Rep. 205 (1914). It is enforced in Porto Rico under the United States bankruptcy law inasmuch as the federal law recognizes local "liens." *Re* Pilar Hermanos, 8 P. R. Fed. 605 (1916).

Fueros

This Code is the consummation of over a thousand years of legal development in Spain. There had coexisted side by side a movement towards general laws, applying first to Castile and then to the whole of Spain, of which Castile was the dominant factor, having for its foundation the old Roman system, originally co-extensive with the peninsula itself, and also for most of this time local systems, contained in municipal or provincial *fueros*, which looked to the preservation of the freer kinds of law which had come down from the Goths and had had their origin, like the English Common Law, in the sands and forests of what is now Denmark and Holland. Each system had its advantages. The one aimed at a general system for the whole country; the other, at local self-government as to civil law. It was found impossible to harmonize them entirely, except in Castile and its provinces. Elsewhere a code could only be supplemental, *supletorio*, as the Spaniards have it, applying to subjects, many in number, it is true, which are not covered by local legislation. The compromise arrived at was expressed in the preliminary sections of the new code as follows:[49]

> The provisions of this title, in so far as they determine the effects of the laws, statutes, and general rules for their application, are binding in all the provinces of the Kingdom.
>
> In all other matters the provinces and territories in which the law of the *fuero* is in force shall preserve it for the present, no change being made in the actual judicial administration, whether written or customary, by the publication of this code, which shall be enforced only as a supplementary law in the absence of that which is such by their special laws.
>
> Notwithstanding the provisions of the foregoing article, this code shall go into effect in Aragon and in the Balearic Islands at the same time as in the provinces not under the foral law in so far as not conflicting with those foral provisions or customary ones which are actually in force.

And thus the Civil Code of 1889 came into being, covering the subjects which must be embraced in every civil code, — Persons, Family, Succession, Property, and Obligations. A large field of

[49] Civ. Code, Arts. 12, 13.

usefulness and growth lies open before it, not only in Spain and its possessions,[50] but as an inspiration and goal for Spanish America, and a model of clear legal statement for the world.[51]

Peter J. Hamilton.

UNITED STATES DISTRICT COURT,
PORTO RICO.

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[50] A royal decree of July 31, 1889, made the Civil Code applicable to Cuba, Porto Rico and the Philippine Islands, what were called the provinces of Ultramar. After the American occupation of Porto Rico the code was slightly revised in 1902, — for instance, omitting the provisions as to family council, — and is still in force.

[51] The modern codes had generally appeared before the Spanish Civil Code and so could not formally be influenced by it; but the German Civil Code, adopted 1896 to go into effect 1900, is based upon the same principles of the Roman Civil Law, so far as it was not directly copied from the *Code Napoléon* in force on the Rhine and Frederick II's Landrecht of 1794. The Austrian Civil Code dates from 1811. SOHM'S INST. OF ROMAN LAW, 7.